

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

v.

MELISSA ANN HOLLEY

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CRIMINAL NO. 6:09CR93-8

**REPORT & RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On October 16, 2013, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Melissa Ann Holley. The government was represented by Bill Baldwin, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Ken Hawk.

Pursuant to a written Plea Agreement, Defendant pled guilty to the offense of Conspiracy to Possess with Intent to Distribute and Distribution of at Least 40 Grams of a Mixture or Substance Containing a Detectable Amount of Methamphetamine. Count 1 carried a statutory maximum imprisonment term of 20 years. The United States Sentencing Guideline range, based on a total offense level of 21 and a criminal history category of III, was 46 to 57 months. On June 2, 2010, Chief District Judge Leonard Davis sentenced Defendant to 48 months imprisonment followed by 3 years of supervised release subject to the standard conditions of release, plus special conditions to include a \$100 special assessment, financial disclosure, and substance abuse testing and treatment. Defendant completed the term of imprisonment and began her term of supervised release on August 29, 2013. On September 10, 2013, the conditions of supervision were modified to include placement in a residential reentry center for 180 days.

Under the terms of supervised release, Defendant was prohibited from using or possessing any unlawful controlled substance, and was required to participate in drug testing and report to a residential reentry center. In its petition, the government alleges that Defendant violated her term of supervised release when she submitted urine specimens testing positive for methamphetamine on May 14, July 2, and August 21, 2013; failed to report to a residential reentry center, and failed to participate in the random drug testing program.

Based on 5th Circuit case law, the Court can find that illicit drug use constitutes possession. If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by possessing methamphetamine, Defendant will have committed a Grade B violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade B violation, the Court may revoke probation or supervised release or extend the term of supervised release and/or modify conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of III, the Guideline imprisonment range for a Grade B violation is 8 to 14 months. U.S.S.G. § 7B1.4(a).

If the Court finds by a preponderance of the evidence that Defendant violated the conditions of supervised release by submitting positive urine specimens, failing to report to a residential reentry center, and failing to participate in the random drug testing program, Defendant will have committed a Grade C violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade C violation, the Court may revoke probation or supervised release or extend the term of supervised release and/or modify conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of III, the Guideline imprisonment range for a Grade C violation is 5 to 11 months. U.S.S.G. § 7B1.4(a).

At the hearing, Defendant pled true to the allegations set forth above. The government recommended one year and one day of imprisonment, with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, the Court **RECOMMENDS** that Defendant Melissa Ann Holley be committed to the custody of the Bureau of Prisons for a term of imprisonment of one year and one day, with no supervised release to follow. The Court recommends incarceration in FCI Carswell, Texas.

Defendant has waived her right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Leonard Davis for adoption immediately upon issuance.

So ORDERED and SIGNED this 18th day of October, 2013.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE